

**HUSCH BLACKWELL**

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March 31, 2021

**VIA ECF**

The Honorable Jesse M. Furman  
United States District Court  
Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *New York City Transit Authority v. Express Scripts, Inc.*  
No. 1:19-cv-05196-JMF (S.D.N.Y.)

Dear Judge Furman:

On behalf of Defendant Express Scripts, Inc. ("Express Scripts"), and pursuant to Section 6 of the S.D.N.Y.'s Electronic Case Filing Rules and Section 7 of the Court's Individual Rules and Practices in Civil Cases, I write to respectfully request leave to redact and file under seal certain documents and information connected to Express Scripts' motion for summary judgment and motion to exclude Plaintiff's expert.

Specifically, Express Scripts seeks leave to file the following **under seal**:

- Exhibit 12 to the Declaration of Elizabeth A. Bozicevic in Support of Express Scripts' Motion for Summary Judgment ("Summary Judgment Declaration"), and Exhibit 3 to the Declaration of Elizabeth A. Bozicevic in Support of Express Scripts' Motion to Exclude Susan A. Hayes ("Expert Declaration"), because they consist of detailed descriptions of proprietary Express Scripts programs offered to clients, and disclosure could place Express Scripts in a competitive disadvantage.

Express Scripts seeks leave to file the following **redacted**:

- Exhibit 1 to the Summary Judgment Declaration, which is the contract between NYCTA and Express Scripts. Express Scripts previously filed this document in a redacted format after requesting leave in order to maintain the privacy of pricing

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and other financial information. (Doc. No. 31). Express Scripts requests leave to redact the same information and for the same reasons as set forth in Express Scripts' prior letter motion requesting leave. (*Id.*).

- Exhibit 14 to the Summary Judgment Declaration and Exhibits 5 and 6 to the Expert Declaration (Ex. 14 and Ex. 5 are the same document). The information Express Scripts seeks to redact is either (1) detailed descriptions of proprietary and confidential Express Scripts programs, or (2) detailed pricing information from which competitive knowledge of Express Scripts' pricing can be deduced.
- Exhibit 16 to the Summary Judgment Declaration attaches a spreadsheet that includes prescription drug claims filled by NYCTA plan members, identifying the plan members and including their private health information. Express Scripts requests leave to redact just that private health information.
- Exhibit 18 to the Summary Judgment Declaration includes highly confidential discussions of NYCTA employee discipline and unproven accusations of fraudulent conduct by those employees. Express Scripts seeks leave to redact just that discipline information and the employees' names.
- Exhibit 1 to the Expert Declaration in order to redact (1) detailed pricing information from which Express Scripts' confidential pricing can be deduced, or (2) private health information about NYCTA's plan members.

Counsel for Express Scripts has conferred with NYCTA's counsel, and they have reviewed and consented to the proposed redactions and under seal filings.

Good cause exists for filing the documents described herein either under seal or redacted:

- **Confidential pricing information and discussion of proprietary programs.** See *SOHC Inc. v. Zentis Sweet Ovations Holding LLC*, No. 14-CV-2270 (JMF), 2014 WL 5643683, at \*5 (S.D.N.Y. Nov. 4, 2014) (finding that plaintiff had shown a sufficient basis to justify its proposed redactions to "specific 'financial figures' . . . which [we]re not relevant to the parties' legal dispute and implicate legitimate privacy interests"); *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal documents containing "highly proprietary material concerning the defendants' marketing strategies, product development, costs and budgeting"); Fed. R. Civ. P. 26(c)(1)(G) permitting issuance of a protective order, for good cause, to prevent disclosure of "a trade secret or other confidential research, development, or commercial information").

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- **Employee discipline & unproven allegations of fraudulent conduct.** See *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (describing privacy of third persons as a factor that weighs against the presumption of access to judicial documents); *Anderson v. New York City Health & Hosps. Corp.*, No. 16CV1051, 2020 WL 1047054, at \*2 (S.D.N.Y. Mar. 4, 2020) (“[T]he privacy interests of innocent third parties should weigh heavily in a court’s decision as to whether to withhold confidential information.” (citation omitted)).
- **Private health information of NYCTA members.** See *Gutierrez v. Dubois*, No. 20 CIV. 2079, 2020 WL 3072242, at \*10 (S.D.N.Y. June 10, 2020) (granting motion to seal medical records in finding that sensitive medical information implicates a “considerable privacy interest”); *Valentini v. Grp. Health Inc.*, No. 20-CV-9526, 2020 WL 7646892, at \*2 (S.D.N.Y. Dec. 23, 2020) (finding privacy interests and defendants’ legal obligations under HIPAA compel sealing confidential health records); *United States v. Sattar*, 471 F. Supp. 2d 380, 387 (S.D.N.Y. 2006) (acknowledging a “recognized privacy interest” in medical information) (collecting cases).

Express Scripts has striven to limit the information filed under seal or redacted as narrowly as possible, while still preserving the confidentiality interests of the parties and the non-parties referenced within the documents. Although all documents referenced herein were marked as “Confidential” or “Highly Confidential” by a party or third party, that is not the only basis for Express Scripts’ request. Rather, the documents so marked contain information that warrants protection.

Accordingly, Express Scripts respectfully requests leave to redact and file under seal the documents referenced above. The full, non-redacted versions of each document are being filed contemporaneously herewith.

Respectfully submitted,

/s/ *Elizabeth A. Bozicevic*

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